

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
J-COMM CORPORATION)	FCC File No. 0006836254
)	
PEAK WIRELESS SERVICES)	FCC File No. 0006878394
)	
EMERGENCY RADIO SERVICE, INC.)	FCC File No. 0007002548
)	
TERRY CAMERON)	FCC File No. 0007023261
)	
Requests for Waivers to Permit Part 90 Use of)	
Channels Between Part 90 Spectrum and Part 74 or)	
Part 95 Spectrum)	

ORDER

Adopted: August 24, 2016

Released: August 25, 2016

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us the above-captioned applications and requests for waiver of section 90.35 of the Commission's rules¹ to permit Part 90 private land mobile radio (PLMR) stations on frequency pairs 451/456.003125 MHz, 451/456.009375 MHz, 451/456.015625 MHz, 462/467.5375 MHz, and 462/467.7375 MHz, which are not designated for Part 90 use. For the reasons set forth below, we deny the waiver requests for frequency pairs 451/456.003125 MHz, 451/456.009375 MHz, 451/456.015625 MHz, and 462/467.7375 MHz, and grant the waiver request for frequency pair 462/467.5375 MHz.

2. *Background.* J-Comm Corporation (J-Comm) seeks to operate on frequency pair 451/456.003125 MHz at six locations in Utah;² Peak Wireless Services (PWS) seeks to operate on frequency pairs 451/456.009375 MHz, 451/456.015625 MHz, 462/467.5375 MHz, and 462/467.7375 MHz at six locations in Utah;³ Emergency Radio Services, Inc. (ERS) seeks to operate on frequency pair 451/456.009375 MHz at one location in Indiana;⁴ and Terry Cameron seeks to operate on frequency pairs 451/456.003125 MHz and 451/456.015625 MHz at three locations in Texas.⁵

3. The requested frequencies are allocated for land mobile operations,⁶ but currently are not

¹ 47 CFR § 90.35.

² See FCC File No. 0006836254 (filed June 10, 2015).

³ See FCC File No. 0006878394 (filed July 16, 2015 and amended Aug. 10 and 14, 2015).

⁴ See FCC File No. 0007002548 (filed Oct. 27, 2015 and amended Oct. 28, 2015).

⁵ See FCC File No. 0007023261 (filed Nov. 12, 2015).

⁶ See 47 CFR § 2.106 (United States Table of Frequency Allocations). PWS and Cameron seek waiver of section 2.106, but we conclude that no such waiver is required. See *Mobile Relay Associates*, Order, 29 FCC Rcd 660, 660, n.6 (WTB MD 2014) (*MRA GMRS Order*).

designated for use on a primary basis by the Industrial/Business (I/B) Pool or any other Commission service.⁷ Frequencies 451.00375 MHz, 451.009375 MHz, and 451.015625 MHz, as well as their paired frequencies 456.00375 MHz, 456.009375 MHz, and 456.015625 MHz are between Part 74 Broadcast Auxiliary Service (BAS) frequencies and I/B Pool frequencies.⁸ Frequencies 462.5375 MHz and 462.7375 MHz, as well as their paired frequencies 467.5375 MHz and 467.7375 MHz, are between I/B Pool frequencies and Part 95 General Mobile Radio Service (GMRS) frequencies.⁹

4. The applicants seek assignment of these frequencies with a 4-kilohertz emission designator, which they contend will present no risk of harmful interference because the requested channels will not overlap any designated frequencies on either side, in light of the implementation of narrowband technology. Further, the applicants contend that there is widespread and increasing PLMR congestion in the areas in which they seek relief.

5. *Discussion.* The Wireless Telecommunications Bureau's Mobility Division (Division) granted similar requests for 451/456 MHz and 462/467 MHz frequency pairs between Part 90 spectrum and Part 74 or 95 spectrum.¹⁰ The Division concluded that the underlying purpose of the rules would not be served by application of the rules because MRA's proposed operations would not spectrally overlap the occupied bandwidth of any currently assignable frequency, and the public interest would be served by permitting the assignment of the requested frequency pairs to alleviate PLMR congestion.¹¹

6. Recently, however, the Commission released a *Notice of Proposed Rulemaking* proposing to codify the Division's waivers only in part.¹² With respect to channels between I/B Pool spectrum and BAS spectrum, the Commission proposed to designate only frequency pairs 451/456.00625 MHz and 451/456.0125 MHz as assignable Part 90 channels.¹³ It tentatively concluded that frequency pair 451/456.009375 MHz, for which the Division had granted waivers in the past,¹⁴ should not be designated as an assignable frequency pair because it would preclude use of frequency pairs 451/456.00625 MHz and 451/456.0125 MHz in the same area, and the public interest would be better served by adding two assignable frequency pairs.¹⁵ Operation on frequency pairs 451/456.003125 MHz, 451/456.009375 MHz, 451/456.015625 MHz would preclude use of frequency pairs 451/456.00625 MHz and 451/456.0125 MHz in those areas. Consequently, we conclude that granting waivers to permit such operation would not be in the public interest. We therefore deny the J-Comm, ERS, and Cameron waiver requests.

7. With respect to channels between I/B Pool spectrum and GMRS spectrum, the

⁷ Medical Micropower Networks operate on a secondary basis in the 451-457 MHz band. See 47 CFR §§ 2.106 note US64, 95.628(b).

⁸ See 47 CFR §§ 74.802(a) (designating 450.000-451.000 MHz and 455.000-456.000 MHz for BAS), 90.35(b)(3) (designating assignable 451/456 MHz I/B Pool frequencies beginning with 451/456.01875 MHz).

⁹ See 47 CFR §§ 90.35(b)(3) (designating assignable 462/467 MHz I/B Pool frequencies from 462/467.000 MHz to 462/467.53125 and from 462/467.750 MHz to 462/467.94375 MHz), 95.621(a) (designating frequency pairs 462/467.5500 and 462/467.7250 for GMRS).

¹⁰ See *Mobile Relay Associates*, Order, 29 FCC Rcd 7292, 7295-96, paras. 10-18 (WTB MD 2014) (*MRA BAS Order*); *MRA GMRS Order*, 29 FCC Rcd at 662-63, paras. 10-11.

¹¹ See *MRA BAS Order*, 29 FCC Rcd at 7294, para. 7; *MRA GMRS Order*, 29 FCC Rcd at 661-62, paras. 6-7.

¹² See *Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum*, Notice of Proposed Rulemaking, FCC 16-110 (rel. Aug. 18, 2016) (*NPRM*).

¹³ See *id.* at para. 6.

¹⁴ See *BAS Order*, 29 FCC Rcd at 7294, para. 7.

¹⁵ See *NPRM* at para. 7.

Commission proposed to designate frequency pairs 462/467.5375 MHz and 462/467.7375 MHz as assignable Part 90 channels, but sought specific comment on whether not to designate frequency pair 462/467.7375 MHz in order to keep adjacent frequency pair 462/467.750 MHz (which still may be assigned with a twenty-five kilohertz bandwidth) available for wideband operations.¹⁶ Consequently, we conclude that granting a waiver for frequency pair 462/467.7375 MHz would undermine the ongoing rulemaking proceeding, which would not further the public interest.¹⁷ Thus, we grant PWS's waiver request only for frequency pair 462/467.5375 MHz, and will process its application accordingly.

8. Accordingly, IT IS ORDERED pursuant to sections 4(i), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), and 303(r), and section 1.925 of the Commission's Rules, 47 CFR § 1.925, that the Request for Waiver filed by J-Comm Corporation on June 10, 2015, in conjunction with application FCC File No. 0006836254 IS DENIED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

9. IT IS FURTHER ORDERED that the Request for Waiver filed by Peak Wireless Services, LLC on June 16, 2015, in conjunction with application FCC File No. 0006878394 IS GRANTED IN PART AND DENIED IN PART as set forth above, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

10. IT IS FURTHER ORDERED that the Request for Waiver filed by Emergency Radio Services on October 27, 2015, in conjunction with application FCC File No. 0007002548 IS DENIED, and the application SHALL BE DISMISSED.

11. IT IS FURTHER ORDERED that the Request for Waiver filed by Terry Cameron on November 12, 2015, in conjunction with application FCC File No. 0007023261 IS DENIED, and the application SHALL BE DISMISSED.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁶ See *id.* at para. 10.

¹⁷ See *Nextel Communications, Inc.*, Order, 14 FCC Rcd 11678, 11691-91, para. 31 (WTB 1999).